

PJS:MJB:cjl

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEPHEN G. CONKLIN,	:	NO. 1:CV-13-02618
Plaintiff		:
	:	
v.	:	(Judge Sanchez)
	:	
YVETTE KANE, PETER J. SMITH,	:	
MARK E. MORRISON, AND	:	
CHRISTINA GARBER,	:	
	:	
Defendant	:	Filed Electronically

**DEFENDANTS PETER J. SMITH AND MARK E. MORRISON'S
STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Defendants United States Attorney Peter J. Smith and Assistant United States Attorney Mark E. Morrison respectfully submit this statement of material facts in support of their motion for summary judgment. Plaintiff Stephen G. Conklin is advised that pursuant to Local Rule 56.1, all facts set forth in this statement will be deemed admitted unless controverted by Conklin with references to the record supporting his position.

1. Mr. Conklin, pro se, filed a civil action against Defendant the Honorable Yvette Kane in the Court of Common Pleas of Dauphin County, Pennsylvania (2013-cv-2962), on or about April 4, 2013. See Conklin v. Kane, No. Civ. 1:13-cv-01531 (M.D. Pa.) (Doc. No. 1).
2. Mr. Conklin filed a Writ of Summons. See id.
3. Mark E. Morrison, Assistant United States Attorney and Civil Chief of the United States Attorney's Office for the Middle District of Pennsylvania, has authority to assign all civil matters and take action in civil matters filed in this district. See Declaration of Mark E. Morrison (Ex. A) ¶ 2.
4. Based on the information Mr. Morrison had available to him, he believed that Mr. Conklin had filed the civil action against Judge Kane in either her official or individual (Bivens) capacities. See id. ¶ 3.
5. Mr. Conklin has had several issues before Judge Kane and there was no evidence to show that Mr. Conklin had any personal business dispute against Judge Kane that was not in her capacity as a judicial officer. See id. ¶ 4.
6. Although no complaint was filed in Dauphin County, research revealed that a notice of removal may be filed under 28 U.S.C. § 1442 when a lawsuit is commenced. See id. ¶ 5.
7. On June 7, 2013, Mr. Morrison, on behalf of Judge Kane, removed the matter to this Court. See id. ¶ 6. The action was docketed as Conklin v.

Kane, No. 1:13-cv-01531 (M.D. Pa), and, pursuant to 28 U.S.C. § 292(b), assigned to the Honorable Timothy J. Savage of the District Court for the Eastern District of Pennsylvania. See Conklin v. Kane, No. Civ. 1:13-cv-01531 (M.D. Pa.) (Doc. No. 1).

8. On July 8, 2013, Mr. Conklin filed a Motion for Remand, arguing that the writ did not provide the legal basis for the state court action and claimed that the removal was done for an improper purpose contrary to Rule 11 of the Federal Rules of Civil Procedure. Mr. Conklin sought costs associated with the remand motion in the amount of \$500.00. See id. (Doc. No. 4).
9. On July 25, 2013, Mr. Morrison, on behalf of Judge Kane, filed a Brief in Response to the motion for remand. See id. (Doc. No. 6).
10. On August 27, 2013, this Court remanded the matter back to Dauphin County, and did not award costs to Mr. Conklin. See id. (Doc. No. 7).
11. After remand to the Dauphin County Court, Mr. Morrison, on behalf of Judge Kane, filed a Rule to file a complaint directed to Mr. Conklin, and withdrew his appearance for Judge Kane after this Bivens action was served on him.
12. To date, Mr. Conklin has yet to file a complaint in Dauphin County Court.
13. Mr. Morrison did not file the notice of removal for any improper purpose. See Morrison Decl. (Ex. A) ¶ 7

14. Mr. Morrison did not retaliate against Mr. Conklin for any reason. See id.

¶ 8.

15. Neither Mr. Conklin nor Mr. Bailey has any evidence that Mr. Morrison or Mr. Smith violated their First, Fourth, or Fourteenth Amendment rights.

16. Mr. Conklin cannot establish that there were similarly situated individuals treated differently by any government official.

17. Mr. Conklin cannot demonstrate that the filing of the notice of removal was an adverse action.

Respectfully submitted,

PETER J. SMITH
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Date: February 4, 2014

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Plaintiff	:	
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	:	
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on February 4, 2014, he served a copy of the attached

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by the Court's ECF filing system

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